Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petition of AT&T Services, Inc., For Forbearance Under 47 U.S.C. § 160(c) From: Enforcement of Certain Rules for Switched Access Services and Toll Free Database Dip Charges	))))	**WC Docket No. 16-363**

REPLY COMMENTS OF SPRINT

I. SUMMARY

Sprint agrees with AT&T[1] that action is required to address high rates charged by local exchange carriers and tandem/transport providers for access services. Access stimulation remains a substantial and expensive problem for the communications industry and consumers despite Commission action in 2011 to lessen the financial incentives for carriers to stimulate traffic. The 2011 Connect America Fund order[2] was effective in lowering the terminating access rates charged by traffic pumpers. But, as was predicted by many, the order just shifted the financial incentives to types of traffic and services that are not capped at low rates and are not moving to bill and keep in 2017.

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[1] Petition of AT&T Services, Inc., *Petition of AT&T Services*, *Inc. for Forbearance Under 47 U.S.C § 160(c)*, WC Docket No. 16-363 (Sept. 30, 2016) ("Petition").

[2] *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform -Mobility Fund,* WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) ("*CAF Order*") (subsequent regulatory history omitted), *aff'd sub nom.*, *In re: FCC 11-161*, Nos. 11-9900, *et al*., 753 F.3d 1015 (10th Cir. 2014), *petitions for rehearing en banc denied*, Orders, Aug. 27, 2014, *cert. denied*, 135 S. Ct. 2072, May 4, 2015 (Nos. 14-610, *et al*.).

Nevertheless, AT&T's suggested "forbearance" approach to solving the intercarrier compensation ("ICC") issues raised in its petition falls far short of resolving significant remaining ICC and interconnection issues and would in fact give rise to additional intercarrier disputes. AT&T, supported by Verizon, seeks a piecemeal approach to rate regulation that lowers the price for services paid by its IXC operations, but ignores other excessive charges LECs, including their own incumbent local exchange carrier ("ILECs") affiliates, impose upon other carriers. Rather than granting AT&T's forbearance petition, the FCC should take it as an invitation to finally and fully replace the monopoly-era switched access regime with a pro-competitive interconnection and reciprocal compensation regime, a process that was mandated by Congress in 1996 but remains incomplete. The Commission took a large step forward in the process in 2011, but unfortunately left several key matters unaddressed. These loopholes have become enlarged as the previous loopholes were narrowed and closed.

Sprint supports many of the suggestions of CenturyLink in its comments[3]—CLEC benchmarking for transit services, direct interconnection requirements if requested by an IXC, and a cap on 8YY database query charges as minimal immediate measures. But these measures do not go far enough. Sprint proposes the FCC take this opportunity to immediately make more fundamental long overdue reforms that would not only permanently address the problems raised in AT&Ts petition but also address the other significant ICC problems the FCC failed to address in 2011 and in the half decade since.

[3] Comments of CenturyLink, WC Docket No. 16-363 (Dec. 2, 2016).

II. TRAFFIC PUMPING REMAINS A PROBLEM FOR CARRIERS AND A CAUSE OF HIGHER COSTS FOR CONSUMERS

Sprint agrees with Verizon and AT&T that ICC reform is long overdue for originating access and for tandem and transport services. Sprint differs from AT&T and Verizon, however, in that Sprint believes that reform of this market should be a part of the final realization of the Congressional mandate in 1996 to eliminate access charges and to move to a reciprocal compensation regime, which the Commission in 2011 determined to mean bill and keep.

AT&T identified two specific categories of access charges that remain elevated far above cost and impose significant unjustified costs on IXCs and their customers.

A. Elevated Tandem and Transport Charges Have Created Incentives for Traffic Pumping as Terminating Access Charges Have Declined

In its Petition, AT&T has identified another newly sprouted problem in the endless game of whack-a-mole against traffic pumpers. Now that the end office termination charges are low and soon to be eliminated due to both the access stimulation rules mandating benchmarking to the lowest price-cap carrier in the state and the transition to bill and keep in the 2011 CAF order, the bulk of charges imposed on IXCs are for transport from the tandem switch to the LEC's end office.

This problem is particularly egregious in Iowa. Commission rules purport to require IXCs, such as Sprint, to route traffic through centralized equal access provider Iowa Network Services, Inc. ("INS") rather than using direct connection or a competitive provider. As a result, over 93 percent of Sprint's transport charges nationwide that would be reduced by AT&T's forbearance petition are for calls to Iowa, which has less than 1 percent of the nation's population. Of all access calls Sprint routed to Iowa customers in November 2016, 78 percent went to traffic pumpers.

INS argues for its continued relevance by citing a 28-year old order that established it as centralized equal access provider and that mandated that all IXCs use when routing interstate calls to and from Iowa end users.[4] This order came about only five years after the breakup of AT&T and eight years before the Telecom Act of 1996, which is itself now 20 years old. INS can point to nothing to show that equal access for end users is superior in the handful of states with a centralized equal access provider rather those states that rely on the dominant ILEC and competitive carriers to fulfill the role of routing traffic to rural exchanges. In fact, the fact that IXCs are required to route traffic through INS is a key reason why wide-scale traffic pumping originated in Iowa and continues to dominate telecommunications in Iowa, as well as South Dakota, which is—not coincidentally—another centralized equal access provider state.

IXCs should be allowed to directly interconnect with the traffic pumping LECs. The gamesmanship between INS and traffic pumping CLECs in Iowa is particularly galling as the expensive rates charged by INS are compounded by traffic pumping CLECs charging again for the same transit service. INS charges a flat transit rate that does not depend on distance. The same expensive $0.00896 per minute rate applies whether the traffic is taken across the building in Des Moines or across the state to one of approximately a dozen interconnection points operated by INS. But some traffic pumping CLECs choose to receive traffic in Des Moines and then bill IXCs—essentially double billing—to take the traffic more than 100 miles across the state (charging by the mile every step of the way) rather than receive the traffic at the closet point on the INS network. In

[4] Comments of Iowa Network Services, Inc., d/b/a Aureon Network Services, WC Docket No. 13-363, at 2 (Dec. 2, 2016).

other words, the terminating LEC is billing the IXC for transport across the state for which the IXC is already being charged by INS pursuant to a 28-year old FCC order.

Great Lakes Communications Corp., for example, receives IXC traffic in Des Moines from INS rather than in Spencer, Iowa, which is an INS interconnection point and the location of Great Lakes' switch. Great Lakes charges $0.00003 per mile multiplied by approximately 132 miles for a total charge of $0.00396 per minute to haul traffic from Des Moines to Spencer—a charge that is entirely duplicative of what IXCs are already being charged by INS.

The FCC reduced and ultimately will eliminate Great Lakes end office charges under the CAF Order, but IXCs are still being billed more than 1.3 cents per minute ($0.01319) even though the IXCs are willing to pay for transport directly to Great Lakes switch on their own or through third-parties. The combined rate of $0.01319 creates plenty of profit to continue to make traffic pumping extremely lucrative to the detriment of consumers despite the elimination of end-office switching rates under the CAF order.

B. Sprint Agrees with AT&T that 8YY Database Query Charges Are Too High and Create Incentives for Abuse

Sprint agrees with AT&T and Verizon that the charges for 8YY database queries are unjustifiably high. Sprint shares Verizon's concerns about the harms caused by 8YY autodialing operations that work in conjunction with affiliated CLECs to flagrantly violate the Commission's TCPA rules by sequentially dialing 8YY numbers to collect the originating 8YY database query charge for calls.[5] These calls are harassing and annoying to the recipients when their phone rings at all hours of the night and they are obligated to pay for the call.

[5] Petition at 18; Verizon Comments at 5-7.

Sprint believes that 8YY dip charges are properly attributable to the LEC of the originating customer. The ability to make toll-free calls is a basic component of providing local exchange service and the costs fairly attributable to the originating customer. Similarly, every local call has to go through the local number portability dip process to ensure the call is routed to the correct carrier. The burden on the originating LEC to dip 8YY should be no greater than the burden to do LNP dips, which originating LECs already do for all local calls and for which they do not receive reimbursement from another carrier. The "toll free" in toll free calling is properly applied to the charges of carrying the call to the recipient. An IXC has no ability to "shop around" for cheaper database queries—the IXC is stuck with whatever rate is charged by the carrier of the originating customer. Because the originating carrier imposes the query charge on another carrier, it has no incentive to find a cheaper database provider or to improve the efficiency of the system. A system in which those costs are attributed to the originating carriers and their customers solves this problem.

While such attribution is eminently sensible, Sprint is amenable to an immediate reduction capped at the rate of the competing ILEC, as was done with other access charges in the *Seventh Report and Order*,[6] with a glide path over two years to bill and keep.

III. FORBEARANCE IS PROBLEMATIC

Intercarrier compensation is a complex subject fraught with intricate historical artifacts and cross subsidies that continue to distort the market. Sprint agrees that bill-and-keep should be the

[6] *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 ¶¶ 54-56 (2001).

ultimate solution, and in order to finally bring the market distortions to an end, the path to bill and keep must be kept short—two years is appropriate.

Any reform, whether through forbearance and detariffing or a more structured approach, must necessarily be accompanied by explicit obligations that ensure the uninterrupted flow of traffic across competing networks and explicit rules establishing the locations where competing carriers exchange traffic. A purely commercial "forbearance" environment can provide no such traffic flow assurances and would create even greater disputes as all carriers have the incentive to minimize their own transport obligations and maximize their competitor's costs. The FCC will continue to have a role in ICC regulation by ensuring that carriers continue to exchange traffic efficiently and that larger carriers cannot disadvantage smaller carriers through unjust and unreasonable interconnection policies.

IV. AT&T'S PETITION EXPOSES THE URGENT NEED TO COMPLETE ***COMPREHENSIVE*** INTERCARRIER COMPENSATION REFORM

The issues AT&T's petition raises are really just symptoms of the woefully broken, outdated, and anti-competitive switched access charge regime that Congress directed the FCC to remove more than 20 years ago. The FCC recognized in 2011 that the minimal ICC reforms it undertook in 2011 were inadequate.[7] While Sprint supports prompt action on the issues raised in AT&T's petition, more fundamental reforms are long overdue.

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[7] "Today, we adopt a bill-and-keep pricing methodology as the default methodology that will apply to all telecommunications traffic at the end of the complete transition period. As discussed in the Order, we find that a bill-and-keep methodology has numerous consumer benefits, best addresses access charge arbitrage, and will promote the transition from TDM to all-IP networks. Although we specify the implementation of the transition for certain terminating access rates in the Order, we did not do the same for other rate elements, including originating switched access, dedicated transport, tandem switching and tandem transport in some circumstances, and other charges including dedicated transport signaling, and signaling for tandem switching. In this section, we seek further comment to complete our reform effort, and establish the proper transition and recovery mechanism for the remaining elements. Commenters

Some commenters expressed the desire and need for the FCC to finish what it started in 2011.[8] Others suggest some modifications get made, but not go completely to bill-and-keep. [9] And, transparently, some commenters are happy with the system the way it is.[10] The FCC clearly understands the significant market distorting effects of asymmetrical ICC rates.[11] It is time to repair, once and for all, a system that benefits some at the expense of others and creates unwanted and sometimes scurrilous traffic stimulation schemes that harm competition and inflate end-user prices. The public interest will be best served when the FCC finally completes what it was ordered to do in 1996 and what it started to do in 2011 by rapidly moving all rates to bill-and-keep. The arguments have already been made and the issue was already decided in the CAF Order. There is no need or benefit to rehashing the same old tired arguments.

V. THE CAF ORDER IDENTIFIED SEVERAL HARMS OF THE CURRENT ICC SYSTEM:

The Commission recognized in 2011 that the current system harms competition and consumers. The Commission took the first step by reducing and ultimately eliminating terminating access charges. And the Commission recognized the need to continue its work by issuing an

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warn that failure to take action promptly on these elements could perpetuate inefficiencies, delay the deployment of IP networks and IP-to-IP interconnection, and maintain opportunities for arbitrage. We agree, and seek to reach the end state for all rate elements as soon as practicable, but with a sensible transition path that ensures that the industry has sufficient time to adapt to changed circumstances. As a result, we seek comment on transitioning the remaining rate elements consistent with our bill-and-keep framework … ." CAF Order ¶ 1297.

[8] Verizon Comments at 5,7.

[9] CenturyLink Comments at 3, 5. Comments of Inteliquent, Inc., Bandwidth.com, Inc. and Onvoy, LLC, WB Docket No. 16-363 (Dec. 2, 2016).

[10] Comments of NTCA, WB Docket No. 16-363, at 2, 18. See also Comments of Peerless Network, Inc.; Birch Communications, Inc., BTC, Inc., Cbeyond Communications, LLC, Goldfield Access network, LC, Kansas Fiber Network, LLC, Louisa Communications, Tex-Tech, Inc. and Peninsula Fiber Network, LLC.

[11] CAF Order ¶ 752.

NPRM. But the work has stalled out in the last five years, despite the recognition that more remains to be done.

The benefits of further reform are obvious:

- A bill-and-keep framework will drive market efficiency by forcing service providers to recover costs through end-user charges as opposed to recovering costs from competitors. Recovering costs from their own end users instead of others who have no alternatives compels service providers to serve their customers efficiently.[12]
- Calculating ICC rates is complicated, costly, adds regulatory uncertainty, and is time consuming. A bill-and-keep framework eliminates each of these problems.[13]
- The erroneous idea that one party benefits from a call more than another party have been disproven and enabled the shifting of network cost recovery to other parties. Bill-and-keep accurately reflects reality, i.e., that both parties to the call benefit and appropriately requires costs recovery from end-users as opposed to other service providers.[14] In particular, the FCC stated that those in high cost areas that are unable to recover all their costs from end-users while maintaining reasonably comparable rates have universal service support available rather than using ICC to make up the difference.[15]
- The current ICC system results in higher end-user rates. A long overdue move to bill-and-keep will enable lower wireless rates, increased wireless network

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[12] *Id.* ¶ 742.

[13] *Id.* ¶ 743.

[14] *Id.* ¶¶ 744-45.

[15] *Id.* ¶ 747.

investment, and lower VoIP rates.[16] In addition, wasteful arbitrage schemes will be eliminated, service provider investment will be more appropriately based on efficient price signals and innovative product development will result when bill-and-keep is finally implemented.[17]

- The elimination of the arbitrage incentives and market distorting effects of the current ICC system are long overdue. All voice technologies, wireless, wireline and VoIP compete with each other to some extent. An ICC system that treats them differently significantly distorts and inhibits competition among service providers and between technologies.[18] That was the case prior to the 2011 Order and is still the case today.[19]
- The imbalance of traffic is not an appropriate determinant of carrier-to-carrier compensation. The recognition of the fact that both parties benefit from a call eliminates this perceived imbalance.[20]

The FCC attempted to address the incentives inherent in the current ICC that resulted in creative and unscrupulous traffic pumping schemes. The reforms being implemented from the 2011 Order have addressed some of this problem, but not all of it.[21] Traffic stimulation schemes still exist and are costing carriers tens of millions of dollars each year.[22] Unless the means for traffic

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[16] *Id.* ¶ 748.

[17] *Id.* ¶ 749-750.

[18] *Id.* ¶ 752.

[19] Verizon Comments at 7.

[20] CAF Order ¶¶ 755-756.

[21] *Id.* ¶¶ 662-666.

[22] Verizon Comments at 1.

pumping are eliminated, quickly implementing bill-and-keep, those harmed by these schemes will be unnecessarily required to waste resources scanning the horizon for the next scheme. For example, several years after the CAF Order, two carriers in Michigan partnered with a wireless carrier to route 1-800 calls through rural Michigan even when the origination and termination points had nothing to do with Michigan.[23] A wireless caller in Los Angeles calling an 800 number in New York had their call routed through rural Michigan for absolutely no bona fide reason, resulting in a charge to the 8YY service provider of more than 4 cents per minute when more efficient routing would have cost mere fractions of a penny. The 8YY service provider had no choice in the routing of the call because it was the recipient, not the originator, of the call. The costs of this unjust and unreasonable routing are not absorbed by carriers but are ultimately passed on to customers.

VI. THE TIME TO ACT IS NOW

Simply put, there is no basis for not finishing what was started in 2011. The FCC has addressed or is well underway with the transformation of FUSF for broadband deployment. Meanwhile, the market distortions including access stimulation, disparate treatment of competing technologies, and the ongoing imposition of grossly inflated rates by LECs for elements the FCC allowed to continue is costing the industry hundreds of millions of dollars per year and delaying the migration to IP. The retail rates that U.S. consumers and businesses are paying for communications are still unnecessarily high due to access charges. All of the harms identified by the FCC still exist. With all this in mind, Sprint makes for following recommendations.

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[23] *AT&T Services, Inc. v. Great Lakes Comnet*, 30 FCC Red. 2586 (2015), pet. for review denied in part, granted in part, 823 F.3d 998 (D.C. Cir. 2016).

A. Originating Access Charges

The market distorting effects of originating access charges are well documented. They bear no resemblance to cost and are applied asymmetrically. 8YY service providers who must deliver the calls to their customers regardless of the origination costs and the price gouging that occurs before the 8YY provider even receives the call continue to be harmed. To correct this situation, Sprint proposes that all price cap ILECs and CLECs be required to phase out originating access charges over two years. No alternative recovery of revenue is necessary because these companies are free to recover all network costs through retail services, most of which are bundled with long-distance service anyway.

B. Transport / Tandem Switching / Points-Of-Interconnection

Traffic pumpers have shifted their strategies to take advantage of the FCC's decision to forgo eliminating tandem switching and tandem transport switched access elements. In addition, the financial incentive of collecting access charges and trunking charges are delaying the movement to efficient multi-state IP interconnection. As long as ILECs are permitted to require competitors to deliver and pick-up the ILECs traffic at thousands of legacy TDM tandems and end offices and permitted to charge grossly excessive rates for these functions, they have strong disincentives to implementing more efficient IP interconnection.

Sprint proposes that price cap ILECs, CLECs and Centralized Equal Access ("CEA") providers be required to phase out transport and tandem switching rates over two years and establish regional IP Points-Of-Interconnection ("POI") that are determined to be appropriate based on sound engineering economics. Since carriers are unlikely to agree on the number and location of the regional IP POIs, a neutral third party, such as the FCC, should facilitate the analysis necessary to identify these locations. Rate-of-return ILECs should be allowed to draw from the FUSF for reimbursement of their incremental costs for transport of voice traffic to-from regional IP interconnection points. An alternative approach would be to determine the incremental cost to transport their voice traffic to the regional IP POIs and determine whether it is enough to warrant recovery given virtually all rate-of-return ILECs are at, near or already purchasing transport to regional IP POIs for Internet traffic.[24]

C. Database/Query Charges

Some CLEC query charges are set at excessively high levels simply because they can be. Sprint supports reducing and capping these rates at ILEC levels in the short term. However, because ILEC rates are also excessively high and bear no resemblance to cost, they too should be reduced. Sprint proposes that query charges should be eliminated. LECs should be permitted to recover costs from their own end users as part of the basic service they provide, i.e., the ability to reach toll-free service.

D. Reiterate that IntraMTA Traffic Is Not Subject to Access Charges

Despite the fact that intraMTA traffic has been subject to reciprocal compensation since 1996, many ILECs continue to insist on imposing the outdated switched access charge regime to this traffic. Sprint asks the FCC to immediately reiterate that intraMTA traffic (regardless of whether there is an intermediary "IXC" involved) is subject to reciprocal compensation treatment, not switched access, as to all carriers in the call path.

[24] Voice traffic as a percentage of Internet data traffic is likely to be 1 percent or less making the cost of transporting voice traffic to regional IP POIs *de minimus*.

The intraMTA rule was adopted in the Commission's 1996 *Local Competition Order*, which implemented the provisions of the 1996 Act designed to open local telecommunications markets to competition. The intraMTA rule has not changed in substance since 1996, when the Commission decided that "traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges."[25] It is noteworthy that the Commission stated in 1996 that intraMTA calls were subject to reciprocal compensation "*rather than*" access charges. It has never been the case that a LEC was entitled to multiple forms of intercarrier compensation for the same call.

The Commission's 2011 CAF Order confirmed that reciprocal compensation rather than access charges apply when an IXC is involved in carrying a call. The LECs argued that intraMTA calls should be "subject to access charges, not reciprocal compensation," for calls carried by an IXC.[26] But the Commission rejected that contention, stating that "intraMTA traffic is subject to reciprocal compensation regardless of whether the two end carriers are directly connected or exchange traffic indirectly via a transit carrier."[27] The Commission instead endorsed Sprint's position that "all intraMTA traffic to or from a CMRS provider is subject to reciprocal compensation."[28] The Commission also endorsed three court of appeals decisions holding that reciprocal compensation applies to intraMTA calls whether or not an IXC is involved.[29] In

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[25] *Local Competition Order* ¶ 1036.

[26] *CAF Order* ¶ 1007.

[27] *Id.*

[28] *Id.*., n.2133.

[29] *Id.*

addition, the Commission twice made clear that it was not *modifying* the intraMTA rule, but was *clarifying* how it worked when an IXC is involved in carrying a call.[30]

E. Eliminate CEA Provider Monopoly

In 2017, there is no place for a carrier monopoly. Therefore, immediately the FCC should eliminate any requirements to use CEA providers for terminating or originating traffic.[31] The vast majority of their MOU are related to pumping which the FCC says is harmful. Therefore, eliminating their terminating monopoly. Carriers, if they choose, should be allowed to directly connect to LECs served by CEA providers and eventually at one of the multi-state regional IP interconnection points that Sprint is also proposing.

VII. CONCLUSION

AT&T's petition points out two subjects in urgent need of FCC reform. But it also omits other subjects that are equally urgent. Complete forbearance carries a risk of generating other anti-competitive harms. Accordingly, Sprint urges the Commission to resolve the issues raised in AT&T's petition as well as the other significant problems discussed above by completing the ICC FNPRM issued in 2011.

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[30] *Id*. ¶ 1007 ("We therefore clarify that the intraMTA rule means that all traffic exchanged between a LEC and a CMRS provider that originates and terminates within the same MTA, as determined at the time the call is initiated, is subject to reciprocal compensation") and n.2133 ("this clarification is consistent with how the intraMTA rule has been interpreted by the federal courts").

[31] Verizon Comments at 5.

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